

## LEND-LEASE: SUPPLIES AND SERVICES <sup>1</sup>

*Agreement, memorandum, and exchange of notes at Washington  
April 30, 1945*

*Entered into force April 30, 1945*

59 Stat. 1627; Executive Agreement Series 480

### AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS UNDER SECTION 3 (C) OF THE LEND-LEASE ACT

As parties signatory to the United Nations Declaration of January 1, 1942,<sup>2</sup> the Government of the United States of America and the Government of the Kingdom of the Netherlands have pledged themselves to employ their full resources, military and economic, against those nations with which they are at war. In the Agreement of July 8, 1942 <sup>3</sup> between the Government of the United States of America and the Government of the Kingdom of the Netherlands, each contracting government undertook to provide the other with such articles, services, facilities and information useful in the prosecution of their common war undertaking as each may be in a position to supply.

The Government of the United States of America and the Government of the Kingdom of the Netherlands desire to insure the continuing provision of such articles, services, facilities or information without interruption owing to any uncertainty as to the date when the military resistance of the common enemy may cease; and desire to insure further that such articles, services, facilities or information as shall be agreed to be furnished by the United States of America for the purpose of providing war aid to the Government of the Kingdom of the Netherlands, shall be disposed of and transferred, following a determination by the President that such aid is no longer necessary to the prosecution of the war, in an orderly manner which will best promote their mutual interests.

For the purpose of attaining the above-stated objectives, the Government of the United States of America and the Government of the Kingdom of the Netherlands agree as follows:

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<sup>1</sup> See also lend-lease settlement agreements of May 28, 1947 (TIAS 1750, *post*, p. 188), and June 1 and 8, 1950 (1 UST 638; TIAS 2119).

<sup>2</sup> EAS 236, *ante*, vol. 3, p. 697.

<sup>3</sup> EAS 259, *ante*, p. 142.

## ARTICLE I

All aid undertaken to be provided by the United States of America under this Agreement shall be made available under the authority and subject to the terms and conditions of the Act of Congress of March 11, 1941,<sup>4</sup> as amended, and any appropriation acts thereunder.

## ARTICLE II

The United States of America will transfer or render to the Government of the Kingdom of the Netherlands such of the articles and services set forth in the Schedule annexed hereto as the President of the United States of America may authorize to be provided prior to a determination by the President that such articles and services are no longer necessary to the prosecution of the war. Any articles and services set forth in that Schedule transferred or rendered to the Government of the Kingdom of the Netherlands prior to such determination shall be provided upon terms the final determination of which shall be deferred until the extent of lend-lease aid provided by the United States of America and of reciprocal aid provided by the Government of the Kingdom of the Netherlands is known and until the progress of events makes clearer the final terms, conditions and benefits which will be in the mutual interests of the United States of America and the Kingdom of the Netherlands in accordance with the terms of the agreement of July 8, 1942, and which will promote the establishment and maintenance of world peace.

## ARTICLE III

After a determination by the President of the United States of America that any of the articles and services set forth in the Schedule annexed hereto are no longer necessary to the prosecution of the war, the United States of America will transfer or render, within such periods of time as may be authorized by law, and the Government of the Kingdom of the Netherlands will accept, such articles and services as shall not have been transferred or rendered to the Government of the Kingdom of the Netherlands prior to said determination.

The Government of the Kingdom of the Netherlands undertakes to pay the United States of America in dollars for the articles and services transferred or rendered under the provisions of this Article in accordance with the terms and conditions prescribed in the Schedule annexed hereto.

## ARTICLE IV

Changes may be made from time to time in the items set forth in the Schedule annexed hereto, by mutual agreement between the Government

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<sup>4</sup> 55 Stat. 31.

of the United States of America and the Government of the Kingdom of the Netherlands.

The Government of the Kingdom of the Netherlands shall be released from its obligation to accept articles or services, under Article III above, upon payment to the Government of the United States of America of any net losses to the Government of the United States of America including contract cancellation charges resulting from the determination of the Government of the Kingdom of the Netherlands not to accept such articles or services.

Delivery of any articles or services, under the provisions of Article III, may be withheld by the Government of the United States of America without cost to the Government of the Kingdom of the Netherlands whenever the President determines that such action is in the national interest.

#### ARTICLE V

Any amounts paid to the Government of the United States of America pursuant to the terms of this Agreement shall be deemed to be among the benefits or considerations provided by the Government of the Kingdom of the Netherlands pursuant to Article VI of the Agreement of July 8, 1942.

#### ARTICLE VI

This Agreement shall take effect as from this day's date. It shall continue in force until a date to be agreed upon by the two Governments.

Signed and sealed at Washington this 30th day of April, 1945.

For the Government of the United States of America:

JOSEPH C. GREW [SEAL]  
*Acting Secretary of State of the  
United States of America*

For the Government of the Kingdom of the Netherlands:

W. v. BOETZELAER [SEAL]  
*Minister of the Netherlands*

#### SCHEDULE

The terms and conditions upon which the articles and services listed below are to be transferred by the United States of America to the Government of the Kingdom of the Netherlands after the determination by the President of the United States of America that such aid is no longer necessary to the prosecution of the war, in accordance with Article III of this Agreement, are as follows:

A. Unless otherwise provided by mutual agreement, transfers of articles to the Government of the Kingdom of the Netherlands shall take place

immediately upon loading of the articles on board ocean vessel in a United States port, provided, that those articles which, prior to the end of the periods authorized by law, shall have been contracted for by the United States Government and shall not have been transferred to the Government of the Kingdom of the Netherlands as above set forth, shall be deemed to be transferred to the Government of the Kingdom of the Netherlands upon the last day of such periods. Risk of loss with respect to articles to be transferred to the Government of the Kingdom of the Netherlands shall pass in accordance with the customary practice of the United States Government with respect to transfers under the Act of Congress of March 11, 1941, unless otherwise provided by mutual agreement.

B. The amount which the Government of the Kingdom of the Netherlands shall pay to the United States of America for articles transferred under the provisions of Article III of this Agreement shall be the total purchase price, as determined by the President of the United States of America, and said total purchase price shall be the price of the articles as determined under paragraph 2 hereof plus the additional costs (incidental to delivery at ship-side) set forth in paragraph 3 hereof.

1. In the determination of the price under paragraph 2 the following definitions shall apply:

(a) The term "contract price" means the contract price f.o.b. point of origin paid by the United States Government to the contractor.

(b) The term "current sale price" with respect to any articles means the market price as of the date of transfer to the Government of the Kingdom of the Netherlands of articles of similar quality and in similar quantity as determined by the President.

2. The price of the articles shall be determined as follows:

(a) If the articles transferred to the Government of the Kingdom of the Netherlands are provided out of articles delivered to a United States Government agency pursuant to an order or contract determined by the President to have been placed for some purpose other than that of filling a requisition or request filed by the Government of the Kingdom of the Netherlands, the price shall be the current sale price.

(b) If the articles transferred to the Government of the Kingdom of the Netherlands have been the subject of a contract or order placed by a United States Government agency for the purpose of filling a requisition or request filed by the Government of the Kingdom of the Netherlands and have been made available by the supplier for shipment prior to the day on which the President shall have determined that such articles are no longer necessary to the prosecution of the war, the price shall be the current sale price or the contract price less 5 per cent thereof, whichever is lower.

(c) If the articles transferred to the Government of the Kingdom of the Netherlands have been the subject of a contract or order placed by a United States Government agency for the purpose of filling a requisition or request filed by the Government of the Kingdom of the Netherlands and have been made available by the supplier for shipment on or after the day on which the President shall have determined that such articles are no longer necessary to the prosecution of the war, the price shall be the contract price.

(d) For the purpose of subparagraphs (b) and (c) above, the articles shall be deemed to have been made available by the supplier for shipment on the date of issuance of the United States Government Bill of Lading (inland) under which the articles were shipped.

3. The additional costs to be added to the price to arrive at the total purchase price shall be the costs incurred by the United States of America for inland transportation, storage and other charges incidental to delivery of the articles at shipside. The United States of America will inform the Government of the Kingdom of the Netherlands from time to time of the amount of such costs incurred and the bases on which they have been determined.

C. Payment of the total purchase price for all articles transferred under the provisions of Article III of this Agreement, shall be made by the Government of the Kingdom of the Netherlands on or before July 1, 1975.

1. Payment of the total purchase price of any article so transferred shall be made in equal annual installments, the first of which shall become due and payable on July 1, 1946, or on the first of July next following the day on which such article shall have been transferred, whichever is later.

2. Nothing herein shall be construed to prevent the Government of the Kingdom of the Netherlands from anticipating the payment of any of such installments or any part thereof.

3. If by agreement of the United States of America and the Government of the Kingdom of the Netherlands it is determined that, because of extraordinary and adverse economic conditions arising during the course of payment, the payment of a due installment would not be in the joint interest of the United States of America and the Government of the Kingdom of the Netherlands, payment may be postponed for an agreed upon period.

D. Interest on the unpaid balances of the total purchase price determined under Section B above for any article so transferred, shall be paid by the Government of the Kingdom of the Netherlands at the fixed rate of two and three-eighths per cent per annum, accruing from the first day of July, 1946 or from the first day of July next following the day on which such article shall have been transferred, whichever is later. Interest shall be

payable annually, the first payment to be made on the first day of July next following the first day of July on which such interest began to accrue.

E. The Government of the Kingdom of the Netherlands shall pay to the United States of America the cost of the services listed in this Schedule to the extent that such services shall be rendered to the Government of the Kingdom of the Netherlands following the determination by the President that such services are no longer necessary to the prosecution of the war. The cost of such services, so rendered, shall be determined by the President of the United States of America and shall be paid by the Government of the Kingdom of the Netherlands in accordance with the same terms as provided for the payment of the total purchase price of the articles provided hereunder, as set forth in Section C above. Interest shall be paid on the unpaid balances of the cost of such services in accordance with the terms of Section D hereof.

F. The articles and services in this Schedule shall be for the territory indicated herein and their total purchase price value shall not exceed \$242,000,000. Such articles and services and their estimated cost to the Government of the United States of America are as follows:

#### FOR METROPOLITAN NETHERLANDS

Raw materials for war use and essential civilian supply, including emergency repair of industrial and housing facilities	\$65, 000, 000
Petroleum	10, 000, 000
Food	70, 000, 000
Agricultural supplies and equipment	13, 000, 000
Clothing, footwear and shoe repair materials	5, 000, 000
Medical supplies	5, 000, 000
Short life equipment and repair parts for use in war production and transportation	47, 000, 000
Prefabricated civilian housing for emergency shelter	5, 000, 000
Freight charges on United States vessels	22, 000, 000
Total	\$242, 000, 000

#### MEMORANDUM

The Government of the United States of America directs the attention of the Government of the Kingdom of the Netherlands to the proposed agreement under Section 3 (c) of the Lend-Lease Act and in particular to Article IV thereof. Under Article IV this Government will review, from time to time, and particularly at the conclusion of hostilities in Europe, as determined by the President, articles and services set forth in the Schedule annexed to the Agreement in order to determine whether the delivery of such articles or services should be withheld in the national interest of the United States. The reservation made by this Government in Article IV to withhold delivery of articles and services "whenever the President determines that such action is in the national interest" constitutes a broad power to cancel or revoke procurement programs or contracts. It is not possible to predict with precision

what occasions or circumstances may arise in the future which may require this Government to withhold delivery. Actual delivery will always be subject to the development of the military situation, and the changing demands of strategy, as well as to economic and financial factors which affect the national interest of this Government.

It is further understood that the Government of the Kingdom of the Netherlands will be obligated to pay currently for civilian supplies furnished by the combined military authorities under "Plan A" or "Plan A" as modified. Payment will be made in accordance with the arrangements to be made with the governments which have furnished the supplies, and in United States dollars to the extent determined under such arrangements.

It is, of course, understood that in the implementation of the provisions of any lend-lease agreement with the Government of the Kingdom of the Netherlands, the Government of the United States of America will act in accordance with its Constitutional procedures.

J. C. G.

DEPARTMENT OF STATE,  
WASHINGTON, *April 30, 1945.*

#### EXCHANGE OF NOTES

*The Netherlands Minister to the Acting Secretary of State*

WASHINGTON, *April 30th, 1945*

MY DEAR MR. SECRETARY:

Several questions of interpretation have arisen with respect to the language of the Agreement between our two Governments under Section 3(c) of the Lend-Lease Act. I believe it will be helpful to indicate the understanding which my Government now has with respect to these questions and I would appreciate an expression from you as to whether or not these understandings are correct.

1. It is the understanding of my Government that the Agreement does not apply to arms and munitions, and that arms and munitions now or hereafter provided to my Government will be supplied, on a straight lend-lease basis, under the Agreement of July 8, 1942 between our two Governments on the principles applying to mutual aid.

2. We understand that in general it is not the intention of the United States Government to exercise its right under Article V of the Agreement between our two Governments dated July 8, 1942 to recapture any articles for which the Government of the Kingdom of the Netherlands has paid or is to pay the United States Government. If, however, the United States Gov-

ernment should exercise this right with respect to any such articles, appropriate arrangements will be made for repayment to the Government of the Kingdom of the Netherlands.

3. With reference to the last paragraph of Article III of the Agreement under Section 3(c) of the Lend-Lease Act, it is the understanding of my Government that no articles or services will be transferred or rendered to my Government under that Article unless they have been requisitioned by my Government.

4. In the first paragraph of Article IV of the Agreement under Section 3(c) of the Lend-Lease Act, it is stated that changes may be made from time to time in the items set forth in the Schedule annexed thereto, by mutual agreement between the United States of America and the Government of the Kingdom of the Netherlands. It is our understanding that this language means that not only the items but also the values expressed for each item in the Schedule and the total value expressed for the whole Schedule, may be modified by mutual agreement taking into consideration among other things the supply situation in the United States and the established needs of the Kingdom of the Netherlands.

5. With regard generally to the provisions of the Agreement under Section 3(c) of the Lend-Lease Act with reference to risk of loss and transfer, as expressed in Section A of the Schedule annexed to the Agreement, it is my understanding that a suitable opportunity will be given to representatives of my Government, in accordance with the general procedure of your Government, to inspect articles proposed to be transferred before their transfer.

6. With reference to the provision of the Schedule annexed to the Agreement under Section 3(c) of the Lend-Lease Act that risk of loss shall pass in accordance with the customary practice of the United States Government with respect to transfers under the Act of Congress of March 11, 1941, it is the understanding of my Government that under the practice referred to risk of loss usually passes when the articles leave the possession of the supplier or are withdrawn from the United States Government stock.

7. With reference to the provision of Section A of the Schedule annexed to the Agreement under Section 3(c) of the Lend-Lease Act that "those articles which, prior to the end of the periods authorized by law, shall have been contracted for by the United States Government and shall not have been transferred to the Government of the Kingdom of the Netherlands as above set forth, shall be deemed to be transferred to the Government of the Kingdom of the Netherlands upon the last day of such periods", it is the understanding of my Government that the term "periods" refers to the period as now provided for by the last clause of Section 3(c) of the Lend-Lease Act, or as such period may hereafter be extended by amendment of that Act, during which the powers conferred by or pursuant to Section 3(a)



of that Act may be exercised to the extent necessary to carry out a contract or agreement made under Section 3(c) of that Act.

Sincerely yours,

W. v. BOETZELAER  
*Minister of the Netherlands*

The Honorable  
Mr. JOSEPH C. GREW,  
*Acting Secretary of State,  
Washington, D.C.*

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*The Acting Secretary of State to the Netherlands Minister*

DEPARTMENT OF STATE  
WASHINGTON  
*April 30, 1945*

MY DEAR MR. MINISTER:

In reply to your letter of today's date outlining your Government's understanding of seven questions which have arisen with respect to the language of the Agreement between our two Governments under Section 3(c) of the Lend Lease Act, I am pleased to state that the understanding of your Government coincides with the views held by the Government of the United States in respect to these matters.

Sincerely yours,

JOSEPH C. GREW  
*Acting Secretary*

The Honorable  
BARON W. VAN BOETZELAER,  
*Minister of the Netherlands.*